

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PHILIP M. MATES,

Plaintiff,

Civil Case No. 21-10017

v.

COMMISSIONER OF SOCIAL,
SECURITY,

Sean F. Cox
United States District Court Judge

Defendant.

/

ORDER ADOPTING
8/9/22 REPORT AND RECOMMENDATION

Plaintiff Philip M. Mates filed this action seeking judicial review of Defendant Commissioner's final decision denying his application for Supplemental Security Income under the Social Security Act. The matter was referred to Magistrate Judge Curtis Ivy, Jr. for determination of all non-dispositive motions under 28 U.S.C. § 636(b)(1)(A) and issuance of a report and recommendation pursuant to 28 U.S.C. § 636(b)(1)(B) and (C). Thereafter, the parties filed cross-motions for summary judgment.

In a Report and Recommendation issued on August 9, 2022 ("the R&R"), Magistrate Judge Ivy recommends that the Court: 1) deny Plaintiff's motion; 2) grant the Commissioner's motion; and 3) affirm the ALJ's decision.

Pursuant to FED. R. CIV. P. 72(b), a party objecting to the recommended disposition of a matter by a Magistrate Judge must file objections to the R&R within fourteen (14) days after being served with a copy of the R&R. "The district judge to whom the case is assigned shall

make a *de novo* determination upon the record, or after additional evidence, of any portion of the magistrate judge’s disposition to which specific written objection has been made.” *Id.*

On August 19, 2022, Plaintiff filed objections to the R&R and the Commissioner has responded to those objections. For the reasons that follow, the Court finds Plaintiff’s objections to be without merit and shall adopt the R&R.

As his first objection, Plaintiff disagrees with the magistrate judge’s overall conclusion that the Administrative Law Judge’s “decision falls within his zone of choice and is supported by substantial evidence.” (Pl.’s Objs. at 1). Plaintiff “acknowledges the ALJ is entitled to a ‘zone of choice’ when there is a real conflict in the medical evidence of record, however, that zone should not be expanded to the size of the known universe.” (*Id.* at 5). In stating this first “objection,” Plaintiff then re-states various arguments he presented in connection with the cross-motions for summary judgment.

To properly object to the R&R, Plaintiff must do more than simply restate the arguments set forth in his summary judgment motion. *Senneff v. Colvin*, 2017 WL 710651 at * 2 (E.D. Mich. Feb. 23, 2017). Plaintiff has not done so here. Moreover, despite Plaintiff’s objections, the undersigned agrees with the magistrate judge’s analysis and his overall conclusion that the ALJ’s decision falls within the zone of choice and is supported by substantial evidence.

Plaintiff’s second objection pertains to the consideration of Plaintiff’s daily activities when evaluating his claim of disabling pain. Plaintiff concedes that it was reasonable and appropriate for the ALJ to consider Plaintiff’s daily activities in this regard. But he disagrees that consideration of his daily activities supports the ALJ’s decision. As Plaintiff himself notes, the magistrate judge agreed that “Plaintiff may be correct that his activities are ‘minimal.’”

(R&R at 13). But the magistrate judge then explained that the ALJ did not rely solely on Plaintiff's daily activities in crafting the RFC and also "relied on objective physical examination findings along with his consideration of Plaintiff's daily activities," such that "his conclusion that the activities are not necessarily consistent with disability was not impermissible." (*Id.* at 13-14). This Court agrees.

Accordingly, the Court OVERRULES Plaintiff's objections and ADOPTS the August 9, 2022 R&R.

IT IS ORDERED that Plaintiff's Motion for Summary Judgment is DENIED.

IT IS FURTHER ORDERED that the Commissioner's Motion for Summary Judgment is GRANTED and the ALJ's decision is AFFIRMED.

IT IS SO ORDERED.

s/Sean F. Cox

Sean F. Cox
United States District Judge

Dated: September 26, 2022